

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|--------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of a Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Integrity Communications, Ltd. |) | |
| Corpus Christ, Texas |) | CC Docket No. 02-6 |
| |) | |
| Schools and Libraries Universal Service |) | |
| Support Mechanism |) | |

APPLICATION FOR REVIEW OF INTEGRITY COMMUNICATIONS, LTD

INTEGRITY COMMUNICATIONS, LTD

James F. Buchanan
WELDER LESHIN LLP
800 N. Shoreline Blvd.
Suite 300, North Tower
Corpus Christi, Texas 78401
(361) 561-8000 – Telephone
(361) 561-8001 – Facsimile

Attorney for Integrity Communications, Ltd.

SUMMARY

Integrity Communications, Ltd (“Integrity”) files this Application For Review (“Application”) of the decisions of the Wireline Competition Bureau relating to the actions of the Universal Service Administrative Company (“USAC”) with respect to certain pending invoices and applications for funding support under the Schools and Libraries Support Mechanism (“E-Rate Program”).

Specifically, the Wireline Competition Bureau erred in finding that USAC acted reasonably in sending out an Audit Letter to Integrity’s E-Rate applicant schools and in suspending funding to other projects without giving Integrity any prior opportunity to respond to the non-compliant audit findings. Such conduct was not authorized or sanctioned even by USAC’s articulated practices.

In addition, the Wireline Competition Bureau erred by sanctioning a USAC Non-Compliant Auditee procedure, as applied by USAC in sending the Audit Letter to Integrity’s E-Rate applicant schools and denying funding without first providing Integrity an opportunity to respond, which clearly violated Integrity’s right to basic due process of law.

Finally, the Wireline Competition Bureau erred in failing to impose a time limit on USAC to process pending invoices and Funding Request Numbers (“FRN”) under the E-Rate Program associated with Integrity and allowing USAC to delay final decisions on these applications for many months.

Integrity respectfully requests the Commission to reverse the Bureau’s finding that USAC acted reasonably in freezing all funding and notifying Integrity’s E-Rate applicants of USAC’s allegations that Integrity violated E-Rate program rules, without first having provided Integrity an opportunity to respond, and further, that the Commission instruct USAC to restore processing of pending FRNs associated with Integrity, and to act on any pending applications within ten (10) after

issuance of the Commission's order and pay any still pending invoices within seven (7) days of the issuance of such order.

TABLE OF CONTENTS

| | | |
|-------------|---|-----------|
| I. | JURISDICTION | 1 |
| II. | FACTUAL BACKGROUND | 1 |
| III. | ISSUES FOR REVIEW..... | 4 |
| IV. | INTEGRITY POSITION ON ISSUES FOR REVIEW..... | 5 |
| | A. Did the Wireline Competition Bureau err in finding that USAC acted reasonably in sending out the Audit Letter to Integrity's E-Rate applicant schools and in suspending funding to other projects without giving Integrity an opportunity to respond to the non-compliant audit findings? | 5 |
| | B. Did the USAC Non-Compliant Auditee procedure as applied by USAC in sending the Audit Letter to Integrity's E-Rate applicant schools and denying funding without first providing Integrity an opportunity to respond violate Integrity's right to due process of law? | 8 |
| | C. Did the Bureau err in failing to impose a time limit on USAC to process pending invoices and FRNs associated with Integrity? | 11 |
| V. | CONCLUSIONS AND REQUESTED RELIEF | 13 |

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|--------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of a Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Integrity Communications, Ltd. |) | |
| Corpus Christi, Texas |) | CC Docket No. 02-6 |
| |) | |
| Schools and Libraries Universal Service |) | |
| Support Mechanism |) | |

APPLICATION FOR REVIEW OF INTEGRITY COMMUNICATIONS, LTD

Now comes Integrity Communications, Ltd (“Integrity”), and files this application for review (“Application”) by the Federal Communications Commission of the July 1, 2010 decision by the Wireline Competition Bureau in the captioned matter.¹

I. JURISDICTION

The Application is authorized by 47 C.F.R. §1.115, which permits such Commission review of action taken pursuant to delegated authority where, among other circumstances, the action taken, in this case by the Wireline Competition Bureau (“Bureau”), involves a question of policy or law which has not previously been resolved by the Commission.²

II. FACTUAL BACKGROUND

At issue in this Application are both Universal Service Administration Company (“USAC”) suspension of funding for Integrity for \$777,602.05 for Funding Request Numbers (“FRN”) for

¹ In the Matter of Request For Review of a Decision of the Universal Service Administrator by Integrity Communications, Ltd. Corpus Christi, TX, Order, DA 10-1244, Wireline Comp. Bur., released July 1, 2010 (“*Recon Order*”) on reconsideration of the Bureau’s Order at 24 FCC Rcd 1186 (Wireline Comp. Bur. 2009) (“*Initial Order*”). Collectively, the *Initial* and *Recon Orders* are referred to as the *Integrity Orders*.

² 47 C.F.R. §1.115(b)(2)(ii).

which the work carried out was certified as complete more than three (3) years ago, the suspension of processing of pending FRNs for projects on which Integrity was the service provider for over two (2) years and the notification of Integrity's alleged violation of an FCC procedure to five (5) school districts which were unrelated to the FRNs and the audit, which initiated the underlying action and this appeal.

San Benito Independent School District (San Benito) solicited bids from service providers for providing internal connections in December 2001. One of the terms of the RFP was "[n]o progress payments or advance payments [would] be made." San Benito entered into an agreement with Integrity for those services. The Request for Production and resulting contract occurred long before the Commission's adoption of its Fifth Report and Order concerning the E-Rate program.³

As the Bureau set out in the Initial Order:

"7. ...The service delivery dates and contract dates were extended several times, causing the project completion date to be moved to September 30, 2006. Between June 23, 2004, and August 10, 2005, Integrity submitted five 'progress invoices' to San Benito for payment. Each progress invoice stated that payment was 'due on receipt.' Consistent with the terms of the contract, San Benito did not make payments to Integrity for any of the progress invoices. Between June 22, 2004, and August 10, 2005, Integrity submitted FCC Forms 474 to USAC requesting payment for the five invoices. For each FCC Form 474, San Benito completed a service certification form stating that the services described in Integrity's invoice were delivered and installed. In two instances, San Benito's service certification forms stated that the applicant intended to pay its non-discounted share on November 15, 2005, and November 30, 2005, respectively. On November 20, 2006, when Integrity issued the "final invoice" to San Benito, San Benito paid the entire non-discounted portion owed to Integrity in one check on December 4, 2006. [Footnotes omitted.]

8. On November 29, 2006, on behalf of USAC, KPMG LLP (KPMG) initiated an E-Rate compliance audit of San Benito for funding year 2002. On December 11, 2006, San Benito informed Integrity of the audit and requested assistance in responding to some of the audit questions. Integrity provided the information to San Benito but was otherwise not involved in the KPMG examination. [Footnotes omitted.]

9. On January 19, 2007, KPMG issued its Independent Accountant's Report, concluding that San Benito was not compliant with E-Rate program rules regarding the

³ See *In the Matter of Schools and Libraries Universal Support Mechanism, Fifth Report and Order*, 19 FCC Rcd 15808 (2004) ("5th Report and Order").

payment of its non-discounted share of the price of the services. The Audit Report stated that San Benito did not pay the five progress invoices when they were issued, but instead paid one check for the full amount on December 4, 2006, after receiving the final invoice. The Audit Report concluded that this was a violation of the Commission's *Schools and Libraries Fifth Report and Order*, which stated that "failure to pay more than 90 days after completion of service...presumptively violates our rule that the Beneficiary must pay its share." In response, among other things, San Benito stated that Integrity had billed San Benito in violation of the agreement that there would be no advance or progress payments to the service provider and that San Benito had reminded Integrity of this in writing. In its Management Response to the Audit Report, USAC stated:

Since the Beneficiary stated in the RFP that there would be no advance or progress payments, they were not required to pay their non-discounted portion until completion of the project. USAC does agree, however, that the service provider should not have billed USAC for the progress payments if their contract with the applicant did not allow for such payments...USAC will not seek recovery from the applicant. However, USAC will take appropriate steps to ensure that in the future the service provider does not prematurely invoice USAC. [Footnotes omitted.]

10. On October 24, 2007, USC sent a letter to Integrity stating that a beneficiary audit had revealed that Integrity was not in compliance with Commission rules because it had prematurely billed USAC for services and equipment. Specifically, USAC stated that Integrity had billed the beneficiary and USAC prior to completion of the project, thereby violating the terms of the RFP, which stated that there would be no advance payments to the service provider before completion of the project. In addition, USAC stated that Integrity's actions "indicate that you failed to comply with one or more of the certifications that you made on program forms and/or that your entity has otherwise failed to comply with program requirements." USAC required Integrity to file within six months a plan to ensure that, when it filed for future reimbursements from USAC, Integrity would have provided the services or equipment to the applicant, and that Integrity's receipt of any progress or advance payments was included in the relevant contract between Integrity and the applicant. USAC informed Integrity that USAC would take no action on funding requests involving Integrity until it reviewed Integrity's plan and determined that it adequately addressed the non-compliance issue. USAC also stated that a copy of the Audit Letter would be sent to all applicants with pending E-Rate funding commitments involving Integrity, so that such applicants "may make informed decisions about how to proceed..." [Footnotes omitted.]⁴

USAC in fact sent copies of its October 24, 2007 letter to five school districts with which Integrity had pending FRNs, but which were not involved in the KPMG audit and which had no interest in the San Benito/Integrity contract. USAC's October 24, 2007 letter did not reference any FRN or

⁴ *Initial Order*, ¶¶ 7-10. No "violation" of the San Benito RFP/contract occurred. Nothing in the RFP or contract prohibited Integrity from sending interim invoices to San Benito to show progress of the project, although it was understood that payment would not be made until completion.

identify the school district involved in the audit, leaving Integrity to determine what USAC's allegations related to.⁵

On November 21, 2007, Integrity wrote to USAC that it had not violated any FCC rule. In doing so, Integrity relied on USAC's procedure for submitting to USAC a Form 474, the form used by the service provider to request reimbursement for support on eligible services that the service provider has already provided to the Billed Entity at discounted prices.⁶

On April 10, 2009, Integrity submitted a compliance plan to the Commission describing its invoice procedures.⁷ The Bureau initially found the compliance plan to be insufficient, and provided Integrity a 15-day window to supplement its compliance plan on September 11, 2009. On September 15, 2009, USAC sent an email to Integrity's counsel acknowledging Integrity's submission, and determining Integrity's compliance plan "acceptable."⁸

USAC also indicated on September 15, 2009, that "Pending applications will now proceed through the process." However, to date, no payments have been made by USAC to Integrity on the 26 invoices for services certified by the applicant school districts as satisfactorily completed between April 2007 and September 2007; nor have any pending applications been approved, but Integrity has been informed of four denials for funding and of three funding requests undergoing a special program compliance review.

III. ISSUES FOR REVIEW

- A. Did the Wireline Competition Bureau err in finding that USAC acted reasonably in sending out the Audit Letter to Integrity's E-Rate applicant schools and in suspending funding to

⁵ See letter from Schools and Libraries Division, Audit Response, USAC to Stewart Burleigh, Integrity (dated October 24, 2007) ("Audit Letter").

⁶ <http://www.usac.org/sl/providers/step09/form474-filing-information.aspx>

⁷ *Initial Order*, ¶10.

⁸ A copy of this email is Exhibit 1 to this Application for Review.

other projects without giving Integrity an opportunity to respond to the non-compliant audit findings?

- B. Did the USAC Non-Compliant Auditee procedure as applied by USAC in sending the Audit Letter to Integrity's E-Rate applicant schools and denying funding without first providing Integrity an opportunity to respond violate Integrity's right to due process of law?
- C. Did the Bureau err in failing to impose a time limit on USAC to process pending invoices and FRNs associated with Integrity?

IV. INTEGRITY POSITION ON ISSUES FOR REVIEW

- A. **Did the Wireline Competition Bureau err in finding that USAC acted reasonably in sending out the Audit Letter to Integrity's E-Rate applicant schools and in suspending funding to other projects without giving Integrity an opportunity to respond to the non-compliant audit findings?**

USAC sent the October 24, 2007 Audit letter pursuant to Universal Service Administration Company Schools and Libraries Support Mechanism "Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees" dated October 28, 2004, which addressed Non-Compliant Auditee Letter:

"On October 13, 2004, WCB approved USAC's proposed Non-Compliant Auditee Letter. This letter will be sent to all auditees that have been determined to be not compliant with program rules. In this letter, the auditee (or service provider if the service provider is determined to be at fault for the non-compliance) is informed that as a result of its non-compliance, no pending or future funding commitments will be made until the auditee (or service provider) is able to provide SLD with assurances that the findings that resulted in the non-compliance have been adequately addressed. The letter proposes a 6-month time frame that can be extended if the auditee provides a reasonable explanation of the need for a longer time period. If the auditee (or service provider) fails to respond, or responds inadequately, USAC will deny pending funding requests. All affected parties including applicants and service providers will receive a copy of the relevant letter(s)."⁹

⁹ See *Public Notice, Wireline Competition Bureau Seeks Comment on the Universal Service Administrative Company's Audit Resolution Plan*, 20 FCC Rcd 1064 (2004). Note the Plan was recited as an attachment to the Public Notice, but is not published in the FCC Record, but is currently obtainable through the Commission's EDOCS system. There is however, no official indication that the Public Notice was

However, Administrative Procedures published by USAC pursuant to the Commission's directive in the *Fifth Report and Order* effective October 31, 2006, and, in fact, the Administrative Procedures published by USAC for the following year, October 31, 2007, provide:¹⁰

Applicants and service provide[r]s who are determined to be non-compliant with FCC rules after undergoing a USAC audit are sent a letter informing them that they will not receive funding commitments for their pending and/or future funding requests until they have adequately addressed the audit findings. If the auditee fails to respond to the auditee letter within the time period provided, or fails to adequately address the findings, pending funding requests will be denied.

Rules that this furthers:

1. The Commission requires USAC to administer the program and to engage in "activities to ensure compliance with FCC rules and regulations." [footnote omitted]
2. 47 C.F.R. § 54.701(a) requires USAC to "administer[] the universal service support mechanisms in an efficient, and competitively neutral manner."
3. 47 C.F.R. § 54.702(g) requires USAC to take "administrative action intended to prevent waste, fraud, and abuse."¹¹

As a consequence, it appears that the Non-compliant Auditee Letter procedure promulgated by USAC October 28, 2004, which included the provision "If an auditee (or service provider) fails to respond, or responds inadequately, USAC will deny pending funding requests. All affected parties including applicants and service providers will receive a copy of the relevant letter(s)," was repealed and replaced in 2006 and 2007.

released with the attachment. Interestingly, the Public Notice is dated with a release date of November 7, 2004, which was a Saturday, An Erratum available through EDOCS refers to a release date of December 7, 2004, but a check of the Commission's Daily Digest for that date does not include the Public Notice.

¹⁰ These Administrative Procedures are collectively referred to hereinafter as the "USAC Administrative Procedures."

¹¹ USAC Administrative Procedures, at pp. 50 (2006) and 54 (2007).

The Bureau erred in upholding USAC's action in sending its October 24, 2007 Audit Letter to the school districts other than the auditee, San Benito, because no authority existed authorizing USAC to undertake such action.

Even if the October 28, 2004 Non-Compliant Auditee Letter procedure had any validity (which Integrity denies), the Bureau nevertheless erred in its holding that USAC acted reasonably in sending out the Audit Letter to Integrity's E-Rate applicant schools and in suspending funding on other projects until Integrity filed its compliance plan. The 2004 Non-compliant Auditee procedure specifically conditioned the suspension of funds and the notification of all affected parties on "the auditee or service provider fails to respond, or responds inadequately." In this instance, the first notice to Integrity regarding the audit was the October 24, 2007 Audit Letter, which was also sent to five (5) additional school districts before Integrity had an opportunity to respond. Not only was there no valid procedure in place on October 24, 2007 authorizing USAC to notify those other parties, USAC violated the previously published procedure by sending the audit letter to the school districts before giving Integrity an opportunity to reply.

The Bureau therefore erred in holding that USAC acted reasonably at the time in sending out the Audit Letter to Integrity's E-Rate applicant schools and in suspending funding before Integrity responded.

Further, USAC misconstrued and extended the 2004 Non-Compliant Auditee procedure beyond its reasonable meaning. This is manifestly so because the Bureau in the *Initial Order* held prospectively:

However, with respect to adverse audit findings on a going-forward basis, USAC should not send an audit letter to or hold funding for schools or service provider unless it has evidence and a reasonable basis to believe that the service provider or school is engaged in a violation of the Commission's rules with respect to that specific school district. It is important to strike a balance between fairness and preventing waste, fraud and abuse. With respect to audits, USAC should not halt funding unless it has cause to believe that a particular school, and/or service provider with respect to a particular school, may be in violation of the Commission's E-Rate rules. If the factual situation present in Integrity's case were to arise in

the future, absent other evidence of wrongdoing, USAC would be acting appropriately to halt funding with respect to Integrity and San Benito, but USAC should not halt funding to other schools using Integrity as their service provider without first taking steps to determine whether similar contractual provisions exist between those schools and Integrity.¹²

The Bureau appropriately restricted any notification, and suspension of funding, only to service providers and schools unless there is evidence that the service provider or school is engaged in a violation of the Commission's rules with respect to that specific school district. In other words, "affected parties" under the 2004 procedure is limited to the auditee or service provider unless there is evidence that the service provider or school violated the Commission's rules with respect to that specific school district.

The Bureau erred in holding that USAC acted reasonably at the time in sending the Audit Letter to Integrity's other E-Rate applicants and in halting funding of other FRNs unrelated to San Benito in the absence of evidence of a violation at other school districts.

B. Did the USAC Non-Compliant Auditee procedure as applied by USAC in sending the Audit Letter to Integrity's E-Rate applicant schools and denying funding without first providing Integrity an opportunity to respond violate Integrity's right to due process of law?

Due process of law is the right of persons under the 5th and 14th Amendments to the United States Constitution to procedural and substantive fairness in situations where the government would deprive the person of life, liberty, or property. In this matter, the Bureau and before that, USAC, deprived Integrity of due process of law in at least two respects in notifying Integrity's E-Rate applicants of an alleged violation and freezing all funding. Integrity was not the subject of the audit of the San Benito Independent School District initiated in 2006.¹³ While Integrity does not dispute that USAC has the authority to determine if a violation of E-Rate rules has occurred from an audit, and elected not to appeal the Bureau's mandate to file a compliance plan with respect to its invoicing

¹² *Initial Order*, ¶ 21.

¹³ *Initial Order*, ¶ 8.

practices, Integrity, nevertheless, feels compelled to comment on the procedure and substance of this matter.

Integrity did not participate in the audit beyond providing San Benito some documents. Elementary due process would dictate that, before action was taken to freeze all funding and to notify the existing customers of a business of an alleged violation of programmatic rules, the company that was the object of this drastic remedial action be given the opportunity to respond to the accusation. Integrity was given no opportunity to respond before USAC sent its Audit Letter and froze all funding, which funding remains frozen.

In the *Initial Order*, the Bureau found that,

Integrity's actions caused San Benito to be in violation of the 90-day rule.⁶⁵

⁶⁵ Although San Benito did not pay its non-discounted share within 90 days of receiving Integrity's progress invoices, we agree with USAC that San Benito did not violate the rule requiring the applicant to pay its non-discounted share because San Benito paid its share prior to the audit.¹⁴

In the *Fifth Report and Order*, the Commission found that "failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles) presumptively violates our rule that the beneficiary must pay its share." However, this presumption follows the Commission's statement that: "while our rules do not set forth a specific timeframe for determining when a beneficiary has failed to pay its non-discounted share, we conclude that a reasonable timeframe is 90 days after delivery of service."

So, the 90-day rule is not a rule at all, but a circumstance that raises a presumption of intent not to pay the non-discounted portion. Here San Benito paid 100% within 90 days of completion. Both USAC and the Bureau concluded that no recovery action against San Benito was warranted because it had paid 100% of the non-discounted share. A presumption is merely an evidentiary rule

¹⁴ *Initial Order*, ¶ 15.

calling for a certain result unless the adversely affected party overcomes it with evidence. San Benito overcame the presumption with evidence that no violation of the “90-day rule” occurred.

Further, the Bureau completely misinterpreted the Non-Compliant Auditee Letter procedure in the superseded November 2004 Audit Resolution Plan. First, the USAC proposed Non-Compliant Auditee form letter, allegedly approved by the Bureau on October 13, 2004, does not appear to be included in the Public Notice cited by the Bureau in the *Initial Order*.¹⁵ It therefore is not publicly noticed.

Moreover, beyond the publication of a Public Notice DA 04-3851 dated released as of November 7, 2004,¹⁶ the Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees, including the Non-Compliant Auditee, appears not to have been adopted in any manner prior to having been superseded by the publication of USAC’s procedures for dealing with non-compliant auditees in 2006 and 2007. Nevertheless, the Non-Compliant Auditee Letter procedure in the November 7, 2004 Public Notice provides:

“This letter will be sent to all auditees that have been determined to be not compliant with program rules.... The letter proposes a 6-month time frame that can be extended if the auditee provides a reasonable explanation of the need for a longer time period. If the auditee (or service provider) fails to respond, or responds inadequately, USAC will deny pending funding requests. All affected parties including applicants and service providers will receive a copy of the relevant letter(s).”

It is obvious from the context, that whatever validity remained of the superseded Non-Compliant Auditee letter procedure, the notice to other parties was to follow *only after* an auditee failed to respond or responded inadequately. Obviously, the superseded procedure was designed to give the auditee or service provider an opportunity “to provide SLD with assurances that the

¹⁵ *Initial Order*, ¶21, n. 81.

¹⁶ As noted previously, the Public Notice is dated with a release date of November 7, 2004, which was a Saturday. An Erratum available through EDOCS refers to a release date of December 7, 2004, but a check of the Commission’s Daily Digest for that date does not include the Public Notice.

findings that resulted in the non-compliance have been adequately addressed” before USAC denies all pending funding requests and notifies other affected parties. The Bureau erred when it found USAC acted reasonably in notifying Integrity’s E-Rate applicants of the adverse conclusion drawn by USAC from the invalid audit findings.¹⁷ For all the foregoing reasons The Bureau’s *Integrity Orders* should be reversed.

C. Did the Bureau err in failing to impose a time limit on USAC to process pending invoices and FRNs associated with Integrity?

The Bureau continues to deny Integrity due process of law by failing to impose on USAC a time-frame within which to review and pay Integrity’s invoices for discounted services approved by USAC in the first instance. The Bureau has the authority to require USAC to act within a specific time frame.¹⁸ Ten months have elapsed since USAC informed Integrity that it accepted Integrity’s compliance plan and processing of its invoices and pending applications would take place, and almost three years have elapsed since USAC froze all activity associated with the E-Rate support program. Due process compels the Bureau to set a time within which USAC must act.

The actions of USAC in suspending review of pending FRNs associated with Integrity Communication and in sending the Audit Letter to school districts not associated with the audit of San Benito Consolidated Independent School District were not reasonable. The actions of USAC resulted in a *de facto* suspension and debarment of Integrity Communications without compliance of the procedures provided at 47 C.F.R. §54.8. Causes for suspension or debarment are conviction of

¹⁷ The Bureau additionally invoked an investigation by the Texas Education Agency of Donna Independent School District as justification for USAC’s actions. Integrity was not the subject of that investigation. See letter from the Texas Education Agency dated August 31, 2007 attached as Exhibit 2. The Commission has recently directed the resumption of processing of such applications based on analogous correspondence. See generally *In the Matter of Data Research Corporation, Order*, DA 10-1265, released July 7, 2010, Wireline Comp. Bur. Integrity is unaware of any other investigations as it was never asked for or had documents subpoenaed nor did any of its employees or former employees testify in any investigatory proceeding.

¹⁸ *Initial Order*, ¶ 25.

or civil judgment for attempt of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism.¹⁹

Without any evidence of a civil judgment or criminal conviction involving any of the enumerated activities, USAC effectively suspended and debarred Integrity Communications. The publication to school districts which were not involved in the San Benito audit effectively debarred Integrity Communications just as if the notice of Integrity's debarment from the schools and libraries support mechanism had been published in the Federal Register. But suspension and debarment can only occur "upon evidence that there exists cause for suspension and debarment" and notice to the person of the conduct relied on, namely, the entry of a criminal conviction or civil judgment.²⁰

Because the Wireline Bureau has noted the unfairness of such a *de facto* debarment on a going forward basis, how could such actions by USAC in this case be determined to be reasonable when Integrity was not given an opportunity to respond to the audit letter before it was sent to the other school districts?

¹⁹ 47 C.F.R. 54.8(c).

²⁰ 47 C.F.R. 54.8(e)(2).

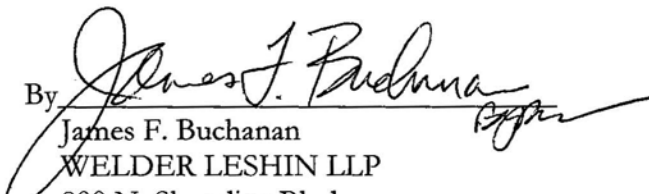
V. CONCLUSIONS AND REQUESTED RELIEF

Integrity respectfully requests the Commission to reverse the Bureau's finding that USAC acted reasonably in freezing all funding and notifying Integrity's E-Rate applicants of USAC's allegations that Integrity violated E-Rate program rules, without first having provided Integrity an opportunity to respond, and further, that the Commission instruct USAC to restore processing of pending FRNs associated with Integrity and direct USAC to act on any pending applications within ten (10) days of issuance of the Commission's order. Further, the Commission should direct USCA to pay any still-pending invoices within seven (7) days of the issuance of the Commission's order.

Respectfully submitted,

INTEGRITY COMMUNICATIONS, LTD

By

A handwritten signature in black ink, appearing to read "James F. Buchanan", is written over a horizontal line. The signature is fluid and cursive.

James F. Buchanan
WELDER LESHIN LLP
800 N. Shoreline Blvd.
Suite 300, North Tower
Corpus Christi, Texas 78401
(361) 561-8000 – Telephone
(361) 561-8001 – Facsimile

Attorney for Integrity Communications, Ltd.

EXHIBIT 1

Jim Buchanan

From: Besozzi, Paul [PBesozzi@PattonBoggs.com]
Sent: Wednesday, September 16, 2009 2:46 PM
To: Brian Murphy
Subject: RE: Integrity Communications Response to FCC Order DA 09-1946 and USAC Noncompliant Letter

Brian -

Thank you for this follow up. You refer to "pending applications will now proceed through the process." Will this include the "pending" invoices for services provided?

Please let me know.

Thanks again.

Paul

Paul C. Besozzi
Partner, Technology and Communications Group
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
202-457-5292 (Direct)
202-457-6315 (Facsimile)
301-346-2431 (Mobile)
pbsozzi@pattonboggs.com

From: Brian Murphy [mailto:bmurphy@usac.org]
Sent: Tuesday, September 15, 2009 1:57 PM
To: Besozzi, Paul
Cc: bsugarek@integritycd.com
Subject: Integrity Communications Response to FCC Order DA 09-1946 and USAC Noncompliant Letter

Paul:

Please accept this email as USAC's acknowledgment of receipt of Integrity Communications' response to FCC Order DA 09-1946 and USAC's non-compliant letter. We have reviewed your responses stating the corrective action taken and it is acceptable. Pending applications will now proceed through the process. Please be aware that we will expect these procedures implemented to be in effect going forward.

Contact me should you have any questions.

Regards,

Brian Murphy
Universal Service Administrative Company
2000 L Street, NW, Suite 200

7/27/2010

Washington, DC 20036

DISCLAIMER:

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (202) 457-6000 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated. To learn more about our firm, please visit our website at <http://www.pattonboggs.com>.

7/27/2010

EXHIBIT 2

08/04/07 18:04 FAX 512 4753688

ST.&FED. INT.

0002



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

August 31, 2007

Mr. David Thompson
Bracewell & Giuliani
711 Louisiana Street, Suite 2300
Houston, TX 77002-2770

Dear Mr. Thompson:

This letter responds to our meeting on August 10, 2007 regarding two of the findings presented in the final report for Donna Independent School District #108-902, dated July 10, 2007. We have reviewed these findings and determined that no amendment to the final report is required.

The agency's role is to investigate school district actions, and this scope limits the procedures and findings it uses to those directly related to determining whether a school district has complied with applicable standards.

The agency did not examine the actions of any of the district's third party vendors.

Integrity Communications, Ltd. was identified in the report merely to provide the factual context for certain findings concerning Donna Independent School District. Nothing in the agency's report implied or should be construed to imply anything about the actions of Integrity Communications, Ltd.

Should you have any questions, please feel free to contact Jim Thompson at 512-463-9037.

Sincerely,

Adrain Johnson, Ed.D.
Associate Commissioner
School District Services

CERTIFICATE OF SERVICE

I, Carly Didden, certify on this 30th day of July 2010, a copy of the foregoing Application for Review has been served via electronic mail or first class mail, postage pre-paid, to the following:

Priya Aiyar
Legal Advisor to Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Priya.Aiyar@fcc.gov

Sharon Gillett
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Sharon.Gillett@fcc.gov

Randy Clarke
Legal Advisor to the Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Randy.Clarke@fcc.gov

Thomas Buckley
Senior Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
thomas.buckley@fcc.gov

Gina Spade
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Gina.Spade@fcc.gov

Kristy Carroll
Deputy General Counsel
Schools and Libraries Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
kcarroll@usac.org

Letter of Appeal
Schools and Libraries Division-
Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981

Brian Murphy
USAC
2000 L Street NW, Suite 200
Washington, D.C. 20036
bmurphy@usac.org

_____/s/_____
Carly Didden